

Serial No. 10/022,655  
Amendment dated June 9, 2004  
Reply to Office Action of April 9, 2004

### **REMARKS**

This response is intended as a full and complete response to the final Office Action mailed April 9, 2004. In the Office Action, the Examiner notes that claims 3-21 and 24-35 are pending, of which claims 3-21 and 24-35 are rejected under one or more of the following statutory sections: 35 U.S.C. §102 and 35 U.S.C. §103.

By this response, Applicants have amended independent claims 5, 18, 19, and 20 to define more clearly Applicants' invention. Applicants have cancelled claims 26, 28, 30, 32, and 34. Also, Applicants have amended the dependencies of claims 27, 29, 31, 33, and 35.

In view of the amendments described above and the following discussion, Applicants submit that the claims pending in the application are believed to be novel under 35 U.S.C. §102 and nonobvious under 35 U.S.C. § 103. Thus, Applicants believe that the application is in condition for allowance.

### **I. EXAMINER INTERVIEW SUMMARY**

Applicants' representative wishes to thank the Examiner for the courtesies extended prior to and during an interview held on May 5, 2004. An Interview Summary (Paper No. 9) was mailed by the Examiner of May 19, 2004.

The interview covered the teachings of prior art references cited as Bedard and Candelore, and the differences between those teachings and the claims substantially as amended herein. Particularly, Applicants' representative noted the lack of any teaching in those references pertaining to Applicants' unique step of aging entries in the favorites list by decrementing their associated count when an entry in the favorites list had not been viewed in a certain time period. The step or functionality of aging, formerly in claim 26 dependent from claim 5, is now included in each of independent claims 5, 18, 19, and 20.

No agreement was reached with the Examiner during or subsequent to the interview pertaining to the patentability of the claims.

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## **II. RESPONSE CONCERNING OFFICIAL NOTICE**

The current Office Action at page 2, Section 2 states that:

*The OFFICIAL NOTICE stating that it is notoriously well known in the art for a service provider to periodically distribute software to set top terminal units in order to update operating parameters was not traversed and is accordingly taken as an admission of fact.*

Applicants disagree with this assertion.

In the response to the prior Office Action, Applicants clearly stated on page 26 thereof that,

*While Applicants agree that service providers are known to distribute software to set-top boxes in their networks, there is no teaching or no widely known fact worthy of judicial notice that service providers dynamically set view threshold values in customer set-top boxes. It is only through the use of improper hindsight that one is even motivated to make that suggestion. "OFFICIAL NOTICE" cannot be properly taken to remedy the shortcomings of the Candelore reference. [Emphasis supplied].*

Applicants' statement clearly shows that Applicants are willing to accept the premise that it is well known for service providers to distribute software. But Applicants have declared their unwillingness to accept the premise that it is well known for service providers to set threshold values or update operating parameters. Contrary to the statement made in the present Office Action, Applicants have not silently acquiesced to the entirety of Examiner's OFFICIAL NOTICE.

## **III. AMENDMENT TO CLAIMS**

Claim 5 has been amended to define Applicants' invention more clearly. Particularly, the limitation presented in claim 26 has been written into amended claim 5 together with language included in the Summary of the Invention section of the original application and in paragraphs substituted on page 19, line 21 pursuant to the prior Amendment dated February 27, 2004. The amendment does not introduce any new matter. Therefore, this amendment is believed to be supported and proper.

Claim 18 has been amended to define Applicants' invention more clearly. Particularly, claim 18 has been amended to include an aging step identical to the step in claim 5 supported by language included in the Summary of the Invention section of the original application and in paragraphs substituted on page 19, line 21 pursuant to the prior Amendment dated February 27, 2004. The amendment does not introduce any new matter. Therefore, this amendment is believed to be supported and proper.

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Claim 19 has been amended to define Applicants' invention more clearly. Particularly, claim 19 has been amended to include an aging element supported by language included in the Summary of the Invention section of the original application and in paragraphs substituted on page 19, line 21 pursuant to the prior Amendment dated February 27, 2004. The amendment does not introduce any new matter. Therefore, this amendment is believed to be supported and proper.

Claim 20 has been amended to define Applicants' invention more clearly. Particularly, claim 20 has been amended to include aging functionality for the favorite selection software supported by language included in the Summary of the Invention section of the original application and in paragraphs substituted on page 19, line 21 pursuant to the prior Amendment dated February 27, 2004. The amendment does not introduce any new matter. Therefore, this amendment is believed to be supported and proper.

Claims 26, 28, 30, 32, and 34 have been cancelled in view of the amendment to claim 5.

Claims 27, 29, 31, 33, and 35 have been amended to correct their dependencies in view of the cancellation of the claims from which they depended previously. These amendments introduce no new matter and are proper and justified.

#### **IV. REJECTION UNDER 35 U.S.C. §102(b)**

##### **Rejection of Claims 3-5, 9, 10, 18-20 in view of Bedard**

The Examiner has rejected claims 3-5, 9, 10 and 18-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,801,747 (hereinafter "Bedard"). Although not expressly rejected in the opening paragraph of Section 4 in the present Office Action, claims 26, 28, 30, 32, and 34 have also been rejected as being anticipated by Bedard. *See the penultimate paragraph on page 4 of the present Office Action.* Applicants have amended claims 5, 18, 19, and 20 to define more clearly their invention. Applicants have also cancelled claims 26, 28, 30, 32, and 34 in view of the amendment to claim 5.

Bedard fails to disclose each and every element of the claimed invention as set forth in amended independent base method claim 5. In particular, Bedard does not teach, show, or suggest the step of:

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*aging the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period;*

as claimed by Applicants.

Bedard does teach decrementing the viewing unit count of an entry at a particular index. See Bedard, FIG. 3, step 316 and the associated description beginning at col. 5, line 59 in the specification. But Bedard's decrementing step is not performed automatically ... when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period, all of which is clearly claimed by Applicants. Instead, Bedard begins decrementing the viewing unit count for an entry when a new entry is seeking to be included in the viewer profile and the viewer profile is already full.

In Bedard, there is no concept of "aging" as claimed by Applicants. Entries in Bedard's viewer profile can remain unwatched, that is, not incremented, forever without any affect on the profile entries. It is only after there arises the dual simultaneous conditions of a) the viewer profile being full and b) a new entry seeking inclusion in the full profile that Bedard's decrementing step commences. The Examiner has expressly recognized the need for the dual simultaneous conditions in Bedard by stating on page 4 of the Office Action that,

*For example, if a viewer watches a particular program for a "predetermined period" (ex. 15 minutes) and there is no room in list to add entry of a newly watched channel, then the "tune count indicator" starting with the least recently watched program is decremented [316].*

Given Bedard's need for dual simultaneous conditions to occur, it is worth noting that, if Bedard's viewer profile is never full, Bedard will not decrement any entry in that profile at any time.

In contrast, Applicants teach and claim a method in which the list of automatic favorite channels is "aged" whether or not the list is full and whether or not a new favorite channel is seeking inclusion in that list. Failure to watch that favorite channel during a time period causes the corresponding entry in the favorites list to remain at the same value (i.e., unincremented), which, in turn, causes that favorite to be decremented automatically if the time period exceeds a predetermined period. There is no other stimulus needed to perform Applicants' decrementing step. Followed to a

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logical conclusion, failure to watch all the favorite channels in the list for a long enough period of time would cause Applicants' claimed list to be emptied entirely by virtue of repeated applications of the claimed aging and removing steps. Nowhere does Bedard show, teach, or suggest such a method step or such a result.

It should be noted that Applicants' claimed method step of aging performs the automatic decrementing only when the channel corresponding to an entry in the favorites list has not been viewed for a certain period of time. Bedard does not use any such condition before commencing his decrementing step. In Bedard's case, entries in the list are decremented without any regard to when the channel corresponding to the decremented favorites list entry was last viewed. Decrementing is based on a factor that is mutually exclusive of the viewing pattern for the decremented entries, namely, that a new channel being watched is attempting to gain entry onto the favorites list. This is nothing like the step defined in Applicants' claims.

Since each and every element of the claimed invention set forth in amended claim 5 is not shown, taught, or even remotely suggested by Bedard, Applicants respectfully submit that claim 5 is not anticipated by Bedard. Therefore, it is believed that claim 5, as amended, is allowable under 35 U.S.C. §102.

Claims 3, 4, 9 and 10 depend from amended independent claim 5 and recite additional limitations thereto. For at least the same reasons set forth above with respect to independent claim 5, Applicants submit that claims 3, 4, 9 and 10 are not anticipated by Bedard. Therefore, it is believed that claims 3, 4, 9 and 10 are allowable under 35 U.S.C. §102.

Amended claim 18 defines a computer readable medium and now calls for the step of:

*aging the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period.*

This step is identical to the aging step defined in claim 5. For all the reasons set forth above with respect to claim 5, which will not be repeated herein for the sake of brevity, Applicants submit that amended claim 18 is not anticipated by Bedard. Therefore, it is believed that claim 18, as amended, is allowable under 35 U.S.C. §102.

Amended claim 19 defines a system and now calls for an element defined as:

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*means for aging the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period.*

This element provides the functionality defined in the aging step in amended claim 5. For all the reasons set forth above with respect to claim 5, which will not be repeated herein for the sake of brevity, Applicants submit that amended claim 19 is not anticipated by Bedard. Therefore, it is believed that claim 19, as amended, is allowable under 35 U.S.C. §102.

Amended claim 20 defines a system and now calls for the favorite selection software included in the system to provide functionality set forth as follows:

*... to age the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period ....*

This functionality is substantially identical to the aging step defined in amended claim 5. For all the reasons set forth above with respect to claim 5, which will not be repeated herein for the sake of brevity, Applicants submit that amended claim 20 is not anticipated by Bedard. Therefore, it is believed that claim 20, as amended, is allowable under 35 U.S.C. §102.

#### **V. REJECTIONS UNDER 35 U.S.C. §103**

Applicants acknowledge that they have been advised of the obligation under 37 C.F.R. §1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. §103(c) and potential 35 U.S.C. §§102(e), (f) or (g) prior art under 35 U.S.C. §103(a).

##### **A. Rejection of Claims 27, 29, 21, 33, and 35 in view of Bedard**

The Examiner has rejected claims 27, 29, 21, 33 and 35 as being unpatentable over Bedard under 35 U.S.C. §103(a). The rejection of claim 21 appears to be a typographical error and is being assumed by Applicants' representative to be claim 31. Applicants respectfully traverse the rejection.

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Claims 27, 29, 31, 33 and 35 have been amended to depend directly or indirectly from independent base claim 5. Applicants' independent base claim 5, as amended herein, calls for the claimed step of,

*aging the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period.*

As discussed above in Section IV of this Response, Bedard lacks any teaching, showing, or suggestion of this unique step. The remarks on this point will not be repeated herein for the sake of brevity and are, therefore, being incorporated herein.

In view of the remarks above with respect to amended claim 5, it would not have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize Bedard, alone or in combination with other prior art references, and thereby arrive at Applicants' invention as defined by dependent claims 27, 29, 31, 33 and 35, dependent directly or indirectly from independent base claim 5. As a result, it is believed that claims 27, 29, 31, 33 and 35 are allowable under 35 U.S.C. §103.

**B. Rejection of Claims 3-8, 18-21, 26 and 27 in view of Candelore**

The Examiner has rejected claims 3-8, 18-21, 26 and 27 under 35 U.S.C. §103(a) as being unpatentable over Candelore et al. (U.S. Pub No. 2002/0104081, hereinafter "Candelore"). Independent claims 5, 18, 19, and 20 have been amended to define more clearly Applicants' invention. Claim 26 has been cancelled in view of the amendment to claim 5.

The method steps of aging by decrementing in claims 5 and 18 have been described above in detail above in Section IV. The means for aging defined in claim 19 and the functionality of aging by decrementing for favorite selection software in claim 20 have also been described in detail above in Section IV. None of these remarks will be repeated herein for the sake of brevity, but they are nonetheless incorporated herein by reference.

Candelore does describe a decrementing step for his method and system. But decrementing by Candelore is not done "automatically ... when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period," all of which is clearly claimed by

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Applicants. Instead, Candelore decrements the count values in anticipation of a so-called "rollover condition" that occurs when the count value for the highest ranking favorite in the list is so high in value that a single up-tick will cause the count value for that favorite to be incremented to an all zero condition. That is, a maximum count value will be incremented once to the minimum count value. When this rollover condition is detected, Candelore reduces the count for every channel in the list so that the relative positions of the count values are at least maintained.

Candelore's decrementing step has nothing to do with viewing inactivity for a period of time. In fact, it is concerned with just the opposite. Viewing activity, not inactivity, causes the count value of one favorite to reach a maximum value and be in jeopardy of a rollover if the viewing continues and the count is incremented. In order to avoid the rollover, the particular count value is decremented by some amount. All other count values, in one example, are also decremented by that amount. Thus, it is the viewing activity of one particular channel that causes all the other channel count values in the list to be decremented. Candelore's system does no inquiry to determine whether the entries being decremented have been viewed in a given time period. The only criteria for decrementation are that the entries have to be on the list and one entry (the one being viewed) has reached a maximum count value putting it in jeopardy of a rollover condition. Accordingly, Candelore cannot be said to teach, show, or suggest Applicants' unique invention including the step of aging by decrementing as defined in claims 5 and 18, a means for aging by decrementing as defined in claim 19, and the software functionality to age by decrementing as defined in claim 20.

In light of the remarks above and as incorporated from other sections herein, it would not have been obvious to a person having ordinary skill in the art at the time the invention was made upon a reading of Candelore, alone or in combination with other prior art references, to make Applicants' invention as defined by amended independent claims 5 and 18-20. Therefore, it is submitted that independent claims 5 and 18 are allowable under 35 U.S.C. §103.

Claims 3, 4, 6, 7, 8 and 27 depend, either directly or indirectly, from Independent claim 5. For the same reasons discussed above with respect to amended independent



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claim 5, Applicants submit that dependent claims 3, 4, 6, 7, 8 and 27 also are allowable under 35 U.S.C. §103.

Claim 21 depends directly from independent claim 20. For the same reasons discussed above with respect to amended independent claim 20, Applicants submit that dependent claim 21 is allowable under 35 U.S.C. §103.

**C. Rejection of Claims 9-14 and 28-33 in view of Candelore and Ohkura**

The Examiner has rejected claims 9-14 and 28-33 under 35 U.S.C. §103(a) as being unpatentable over Candelore in view of Ohkura et al. (U.S. Patent No. 5,737,029, hereinafter "Ohkura"). Claims 28, 30 and 32 have been cancelled. The remaining rejected claims, claims 9-14, 29, 31, and 33 are dependent, directly or indirectly, upon Applicants' independent base claim 5, as now amended. In view of the amendment to claim 5, Applicants respectfully traverse the instant rejection.

It has already been discussed above that Candelore fails to teach Applicants' method step of aging as defined in claim 5. Similarly, the Ohkura reference fails to teach at least Applicants' method step of aging as defined in claim 5. The Examiner appears to be in agreement that Ohkura lacks any teaching about the aging step because the Office Action is silent on pages 13 and 14 about Ohkura's relevance to claims 28-33. Those claims deal particularly with the step of aging as defined now in claim 5.

Since Ohkura does not teach, show, or suggest the claimed step of aging, it is believed that the Ohkura reference, either alone or in combination with Candelore, does not teach, show or suggest each and every element of Applicants' claimed invention defined in amended claim 5. Since claims 9-14, 29, 31, and 33 depend directly or indirectly from claim 5 and since amended claim 5 is believed to be allowable over Ohkura, alone or in combination with Candelore, Applicants respectfully submit that claims 9-14, 29, 31, and 33, dependent directly and indirectly from amended claim 5, are also allowable over Ohkura and Candelore. Therefore, it is believed that claims 9-14, 29, 31, and 33 are allowable under 35 U.S.C. §103.

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**D. Rejection of Claims 13, 15, 16 and 25 in view of Candelore and Noguchi**

The Examiner has rejected claims 13, 15, 16 and 25 under 35 U.S.C. §103(a) as being unpatentable over Candelore in view of U.S. Patent 6,034,677 (hereinafter "Noguchi"). The rejected claims depend directly and indirectly from independent amended base claim 5. In view of the amendment to claim 5, Applicants respectfully traverse the rejection.

Noguchi teaches a system for displaying an electronic program guide on a monitor, such as a television screen. Noguchi shows a remote control device having a number of different controls, one of which is a "favorites" control. The favorites control allows the user "to designate certain programs as favorite programs." This control also permits "selection of favorite programs." There is no teaching in Noguchi about aging entries in the favorites list when they have not been watched for a certain time period, as is taught and claimed by Applicants. As a result, the addition of Noguchi's teachings to the teachings of Candelore, even if such addition is properly motivated by the references alone, falls short of teaching, suggesting, or showing Applicants' unique method as a whole.

It has already been discussed above that Candelore fails to teach Applicants' method step of aging as defined in independent base claim 5. As discussed immediately above, Noguchi fails at the outset to teach Applicants' method step of aging as defined in claim 5.

In light of the remarks presented above with respect to independent base claim 5, it is submitted that the Candelore and Noguchi patents fail to teach, show, or suggest Applicants' invention as defined in base claim 5 and in dependent claims 13, 15, 16, and 25. As a result, it is submitted that it would not have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Candelore with Noguchi and thereby arrive at Applicants' invention as defined by dependent claims 13, 15, 16 and 25, all dependent directly or indirectly from independent base claim 5. Therefore, Applicants believe that dependent claims 13, 15, 16 and 25 are allowable under 35 U.S.C. §103.

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**E. Rejection of Claims 17, 34 and 35 in view of Candelore and McClard**

The Examiner has rejected claims 17, 34 and 35 as being unpatentable under 35 U.S.C. §103(a) over Candelore in view of U.S. Patent 6,438,752 B1 (hereinafter "McClard"). Claim 34 has been cancelled in light of the amendment to claim 5. Claims 17 and 35 depend directly and indirectly from independent amended base claim 5. In view of the amendment to claim 5, this rejection is respectfully traversed.

McClard teaches a system for storing and selecting favorite programs tailored for each individual user. As programs are watched, they are placed in a list of favorites. McClard discusses populating the list and selecting programs/channels from the list. But McClard teaches nothing about aging the list as taught and claimed by Applicants. Moreover, McClard teaches nothing about removing entries from the list.

It has already been discussed above that Candelore fails to teach Applicants' method step of aging as defined in independent base claim 5. As discussed immediately above, McClard fails at the outset to teach Applicants' method step of aging as defined in claim 5.

In view of the remarks immediately above and those remarks not repeated herein with respect to independent claim 5 and Candelore, it is respectfully submitted that it would not have been obvious to a person having ordinary skill in the art upon a reading of Candelore and McClard, separately or in combination, at the time the invention was made to make Applicants' invention as defined by dependent claims 17 and 35, dependent directly or indirectly from amended independent base claim 5. As a result, it is believed that the combination of Candelore and McClard fails to teach, show, or suggest Applicants' claimed invention. Therefore, Applicants respectfully submit that claims 17 and 35 are allowable under 35 U.S.C. §103.

**F. Rejection of Claim 24 in view of Candelore and Florence**

The Examiner has rejected claim 24 under 35 U.S.C. §102(e) as being unpatentable over Candelore in view of U.S. Patent Application Publication No. 2002/01888948 (hereinafter "Florence"). Claim 24 depends directly from claim 5. In view of the amendment to independent base claim 5, Applicants respectfully traverse the rejection.

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Florence describes a set top box that is capable of storing channel favorites in a channel favorites table and for displaying the list of stored channel favorites for a viewer. Favorites are based on computed cumulative viewing time. But Florence fails to teach, show, or even remotely suggest aging the favorites list as taught and claimed by Applicants. In addition, Florence teaches nothing about removing entries from the favorites list.

Claim 24 depends directly from Applicants' independent base claim 5. Applicants' independent base claim 5 calls for the claimed step of

*aging the list of automatic favorite channels by automatically decrementing the associated channel tune count indicator for any identifier in the list of automatic favorite channels when the channel tune count indicator for a channel associated with the any identifier is not incremented within a time period that exceeds a predetermined period.*

As discussed above, Candelore lacks any teaching, showing or suggestion of this unique step. Since Florence does not teach, show, or suggest this step, the addition of the teachings of Florence to Candelore does not cure the infirmities of Candelore. The combined teachings of Florence and Candelore fail to teach, show, or suggest Applicants' unique step of aging.

In view of the remarks above and those remarks not repeated herein with respect to independent claim 5 and Candelore, Applicants respectfully submit that it would not have been obvious to a person having ordinary skill in the art upon a reading of Candelore and Florence at the time the invention was made to make Applicants' invention as defined by dependent claim 24, dependent directly from independent base claim 5. Therefore, Applicants believe that claim 24 is allowable under 35 U.S.C. §103.

#### **VI. REFERENCES NOT APPLIED**

The references of Yoshinobu and Hendricks have been cited, but not applied. After reviewing these references, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

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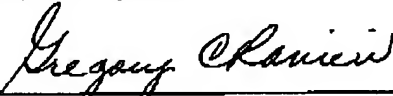
### CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the claims presently in their application are definite under the provisions of 35 U.S.C. §112, novel under the provisions of 35 U.S.C. §102, and nonobvious under the provisions of 35 U.S.C. §103. Applicants believe that this application is in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Gregory C. Ranleri, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: JUNE 9, 2004

  
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Carol Wilson  
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June 9, 2004  
Date of signature